

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

NUSRAT SAEED,

Case No. 23-CV-1349 (ADM/JFD)

Plaintiff,

v.

**ORDER AND REPORT AND
RECOMMENDATION**

CENTURY COLLEGE,
JOHN ROHLEDER,
officer at Century College,
ROSA RODRIGUEZ,
officer at Century College,

Defendants.

This matter is before the Court on Defendants' Motion to Dismiss (Dkt. No. 6), Plaintiff's Motion to Amend the Complaint (Dkt. No. 19), Plaintiff's Amended Complaint (Dkt. No. 31) and Defendants' Motion to Dismiss the Amended Complaint (Dkt. No. 34). The District Judge in this case has referred all dispositive and non-dispositive motions to the undersigned United States Magistrate Judge for a Report and Recommendation pursuant to 28 U.S.C. § 636 and District of Minnesota Local Rule 72.1. (Dkt. No. 16.) This order lifts the stay previously imposed in this case (Dkt. No. 27), designates Plaintiff's Amended Complaint as the operative complaint, and denies Plaintiff's Motion to Amend the Complaint as moot. The undersigned further recommends that the Defendants' Motion to Dismiss (Dkt. No. 6) be denied as moot.

Plaintiff—who is representing herself—sued defendants for violations of Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act. (Compl. 2, Dkt. No. 1.) On August 29, 2023, Defendants filed a Motion to Dismiss under Fed. R. Civ. P. 12(b)(5) alleging insufficient service of process. (Defs.’ Mem. Supp. Mot. Dismiss 1, Dkt. No. 9.) Plaintiff responded to the motion, somewhat unusually, by filing a motion to amend her complaint. (Pl.’s Response Mot. Dismiss 1, Dkt. No. 17; Pl.’s Mot. Amend 1, Dkt. No. 19.) In order to facilitate a referral of Plaintiff to the Court’s Pro Se Project (Dkt. No. 28), the Court stayed the case on September 15 (Dkt. No. 27).

Plaintiff filed an amended complaint on September 18. (Dkt. No. 31.) Federal Rule of Civil Procedure 15(a) explains that a party can amend their complaint once without approval from the Court or agreement from the opposing party.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

- (A) 21 days after serving it, or
- (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Fed. R. Civ. P. 15(a). A complaint is a pleading that requires a response. Fed. R. Civ. P. 7(a)(1); Fed. R. Civ. P. 12(a)(1)(A). Under Rule 15(a)(1)(B), Plaintiff could amend her complaint on or before September 19, 21 days after Defendants filed their first motion to dismiss. Plaintiff filed her amended complaint on September 18. (Am. Compl. 1.) The Amended Complaint (Dkt. No. 31) is now the operative complaint.

Because the original complaint is no longer the operative complaint, the undersigned respectfully recommends that the Motion to Dismiss the original complaint

be denied as moot. Similarly, there is nothing for the Court to decide on the motion to amend the original complaint and the undersigned denies that motion as moot.

After Plaintiff filed her Amended Complaint, Defendants moved to dismiss it, relying on the arguments made previously in their first motion to dismiss. (Mot. to Dismiss II at 1.) Now that the stay is lifted, the Motion to Dismiss will be fully briefed on the schedule outlined below.

Accordingly, based on all the files, records, and proceedings herein, **IT IS
HEREBY ORDERED** that:

1. The stay in this case is lifted.
2. Plaintiff's Motion to Amend the Complaint (Dkt. No. 19) is **DENIED AS MOOT**.
3. The parties will brief the Defendants' Motion to Dismiss (Dkt. No. 34) as follows:
 - a. Defendants will file the remainder of their moving papers for the Motion to Dismiss (Dkt. No. 34) in compliance with LR 7.1 on or before **November 13, 2023**.
 - b. Plaintiff will have until **December 4, 2023** to respond to the Motion to Dismiss.
 - c. Defendants will file their reply to the Motion to Dismiss on **December 18, 2023**.
4. When Plaintiff responds to the Motion to Dismiss, she will also file a letter updating the Court on her efforts to serve the Defendants under the Federal Rules of Civil Procedure. If the Defendants wish to reply to the letter, they must do so within seven days of receiving Plaintiff's letter.

Accordingly, based on all the files, records, and proceedings herein, **IT IS
HEREBY RECOMMENDED** that:

1. Defendants' Motion to Dismiss (Dkt. No. 6) be **DENIED AS MOOT**.

Date: October 30, 2023

s/ John F. Docherty
JOHN F. DOCHERTY
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals. Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation.

A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).